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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,359	02/12/2004	Andres Marmolejo Rizo	282.01-P-USA	7262
30040	7590	01/26/2006	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/777,359	Applicant(s) RIZO, ANDRES MARMOLEJO	
	Examiner S. B. McCormick-Ewoldt	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The amendment of August 25, 2005 is hereby acknowledged.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims Pending

Claims 1-9 are pending.

Claim Objections

Claim 9 remains objected to because of the following informalities: the term "soar" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The rejection is over the recitations "Between 80% and 99%," "between 1% and 10%," "in 1 to 1 molal ratio to said acid," "wherein said metal is selected from the group consisting of (lithium, sodium, potassium, rubidium, and cesium)," "Between .005% and .5%," and "Between 0.01% and 5%." The specification does not disclose the amounts stated in the claims or the type of metals. Thus, an attempt to limit the amount of ingredients and type of metals adds new matter. The specification does not mention that the amounts or the type of metal used; thus, these limitations may introduce new matter.

Claim Rejections - 35 USC § 112

Claims 1-9 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 1(c) the recitation “amounts effective” remain indefinite as to what Applicant is meaning. What amount of the composition must be effective to meet this limitation of the claim. Clarification is needed.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 1(d) and claim 9, the recitation “substantial lessening” is indefinite as to what Applicant is meaning. How much relief is provided for the symptoms? Clarification is needed.

Claim Rejections - 35 USC § 103

Claims 1-9 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rajaiah *et al.* (US 6,514,484 B2) in view of Hughes *et al.* (US 6,08,171), Mussinan *et al.* (US 4,241,098) and Williams *et al.* (US 5,186, 926) as stated in the previous Office action.

Rajaiah *et al.* (US 6,514,484 B2) discloses using acetic acid, wintergreen oil, baking soda (i.e. sodium carbonate), sweeteners and artificial flavorings in a composition (column 11, line 26; column 13, line 48; column 14, line 57; column 15, lines 12-14, 34; column 17, line 21). Rajaiah do not specifically disclose the composition in a form of tablets, pills, lozenges, syrup or salve or using gum acacia. Applicant’s arguments filed August 25, 2005 have been fully considered but they are not persuasive.

Applicant argues that Rajaiah does not disclose the use of gum Arabic and vinegar. This is not persuasive as acetic acid is also known as vinegar. Even though Rajaiah does not disclose the use of gum acacia, Applicant is reminded that the rejection is based on the combination of

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references. In addition, vinegar is known as a topical non-steroidal anti-inflammatory drug (NSAID) (see www.medicinet.com).

Hughes *et al.* (US 6,008,171) disclose using sodium carbonate and wintergreen oil in a composition that can be used in a liquid or tablet form (column 3, lines 31-32; column 6, lines 29-32; column 7, line 45). Applicant's arguments filed August 25, 2005 have been fully considered but they are not persuasive.

Applicant argues that Hughes does not teach medicinal compositions of any type and has no reference to gum acacia and vinegar. This is not persuasive a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. With regard to the exclusion of gum acacia and vinegar, Applicant is reminded that the rejection is based on the combination of references.

Mussinan *et al.* (US 4,241,098) disclose using sweetening agents, gum arabic, vinegar (i.e. acetic acid), oil of wintergreen and sodium carbonate in a composition (column 7, lines 24, 52; column 8, line 3; column 10, line 31; EXAMPLE XXIV). Applicant's arguments filed August 25, 2005 have been fully considered but they are not persuasive.

In response to **Applicant's argument** that Mussinan *et al.* does not teach any medicinal compositions of any type, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Williams *et al.* (US 5,186, 926) specifically disclose the use of wintergreen mint in an oral composition such as in a tablet form (column 3, lines 3-5 and TABLE VII). Applicant's arguments filed August 25, 2005 have been fully considered but they are not persuasive.

Applicant argues that Williams *et al.* do not mention gum arabic or vinegar. This is not persuasive because Williams does disclose arabic gum (column 4, line 30). In addition, while

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Williams *et al.* do not specifically disclose using vinegar, Williams does disclose using an organic acid which is claimed (column 3, lines 65-66).

In response to all of Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine vinegar, sodium carbonate and wintergreen oil, as discussed above for the following reasons. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose.

Summary

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

Susan D. Coe

11-17-05

**SUSAN COE
PRIMARY EXAMINER**